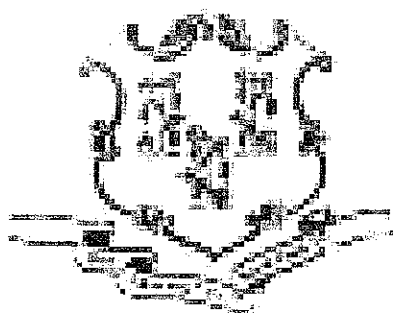


# **Governor's Task Force on Contracting Reform**



## **Construction Procedures Work Group Report**

# **Governor's Task Force on Contracting Reform**

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# Introduction

The Construction Procedures Work Group was assigned to put forth recommendations to reform the contracting procedures within the selection of consultants and the award of bids pertaining to the construction arena. With this charge, the Work Group was asked to consider the following themes:

- Adopt clear and consistent procedures to evaluate bids and contractor performance
- Require agencies to maintain complete, clear and open records of the contractor. selection process, including written documentation for decisions by those involved in the selection process.
- Establish a permanent oversight board for all major state contracts to ensure consistency and adherence to all contracting requirements.
- Review the role of the State Properties Review Board to ensure appropriate oversight of all state leases.
- Enacting a False Claims Act modeled after the federal statute, providing for damages and penalties against contractors who defraud the State.

To that end, the Work Group established four objectives that are addressed within each recommendation. The objectives are transparency, consistency, compliance and quality control, and expediency. These objectives are further expanded to provide definition and context.

## **TRANSPARENCY:**

To ensure integrity in state contracting, the contract award process must be open to public scrutiny. Government transparency should be embedded in the design of all contracting processes. This lack of transparency prevents the uses from actively participating in government and from raising questions or protesting unfair or ill-advised decisions. A lack of transparency can conceal official graft or favoritism. Transparency will allow citizens to understand how government decisions are made and may reduce the challenges to those decisions, thereby improving efficiency.

## **CONSISTENCY:**

To ensure integrity in state contracting, the process should be consistent, streamlined, and uniformly applicable throughout and within all levels of government. The more widely known a process is, the less likely it can be manipulated or abused. Consistency adds to the transparency of the process. There currently exist multiple statutes that govern the construction and consultant selection process for different agencies under the same executive branch of government. There appears to be no compelling reason as to why contracting agencies should not fall under the same set of minimum laws and standards. A major benefit of one set of minimum standards for a distinct process is that when a problem is discovered or an update is required, it only needs to be done in one place and is effective across all agencies. This will avoid correcting a deficiency in one agency and having it reoccur in another at a later date.

## **COMPLIANCE AND QUALITY CONTROL:**

To ensure integrity in state contracting, a process should be established for determining whether contracts are being faithfully performed and whether the public is getting the full value of the contracts. It appears that some problems have arisen as a result of not following the standards already in place. Strengthening the compliance and quality control of an effective procedure will achieve greater consistency and efficiency and ultimately transparent results.

**EXPEDIENCY:**

To ensure integrity in state contracting, the contracting process must be timely, efficient, effective, and conducted by well-trained staff. Each new requirement looked at individually may not be considered to have much of an impact on the process. However, when looking at the cumulative effect of each added step in the process, it can have a large impact on the efficient and effective manner that an objective be achieved. Reviews should be appropriate and deliberate. In the current system, there appears to be duplicative authorities and redundant reviews.

For example, one result of an excessively long and inefficient process is that the employee trying to execute a task, under great demands for expediency, will eventually develop "shortcuts". This can cause well intended actions, with the agency's or customers' best interests being considered, to result in poor execution with less than desired results and/or the appearance of suspect processes.

Another consideration is the costs associated with prolonged processes. In the current environment there are added external impacts beyond just the length of the process that should be considered in the totality of the procedures. Items such as external approvals and bonding schedules and approvals all add time to the execution of a contract. Lengthening the process adds to the likelihood of extending bids. Price fluctuations in materials can be 1-2 % and occur in a period as short as 4 weeks. For a \$30 million dollar project at 1% represents \$300,000. This extension mechanism creates inherent problems since a low bidder is unlikely to decline to hold a price even if there have been price increases. The contractor subsequently has to make up the difference during performance of the contract. A delayed decision during construction can result in days of delay, which can represent as much as \$5000 / day in costs to the State and ultimately the taxpayer.

**RECOMMENDATIONS**

The Work Group submits the following three recommendations for Task Force consideration. While these recommendations were targeted to effect change in the construction procedures area, the work group further recommends that these recommendations be considered for implementation in all procurement.

			<b>OBJECTIVES</b>			
			<b>Statewide Consistency</b>	<b>Compliance &amp; Quality Control</b>	<b>Transparency</b>	<b>Expediency</b>
<b>RECOMMENDATIONS</b>	1	Establish Contracting Standards Board	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
	2	Implement Training program		<b>X</b>	<b>X</b>	<b>X</b>
	3	Require Internal Performance Reviews	<b>X</b>	<b>X</b>		

## Recommendation # 1

### ESTABLISH CONTRACTING STANDARDS BOARD

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#### ***Current Situation:***

The Connecticut General Statutes mandates differing degrees of rules, regulations, standards, and oversight for the various state agencies, offices, institutions, committees, and municipalities that have the statutory responsibility for contracting and consultant selections, and the resulting contracts.<sup>1</sup> Consequently, there are no universal minimum statutory requirements applicable to all contracting entities for the following processes and procedures:

- contract solicitations;
- consultant and contractor selection;
- contract oversight;
- construction bidding and awards;
- appeal processes;
- process turn around time durations.

#### ***Problem:***

The State of Connecticut lacks consistent statutory, regulatory, and administrative processes and procedures for contracting. The numerous existing statutes limit the State from “.....***establishing rules and regulations to provide safeguards to support the highest standards of public integrity and ethical principles***” as mandated by Governor Rell’s Executive Order No. 1. The absence of a unified state contracting statute makes it difficult, if not impossible, to prevent the types of problems and concerns that have occurred in the past from reoccurring.

Connecticut also lacks a centralized contract oversight body that periodically audits all state entities and municipalities for conformance with the contract statutes, rules, regulations and standards. Even without a centralized oversight body, the contract processes are already lengthy, and sometimes redundant, inconsistent, and inefficient.

Connecticut does not have a centralized one-stop location for posting of all contracting and procurement information within the State for the following:

- contract solicitations;
- rules and standards;
- processes and procedures;
- results of solicitations, i.e. posting of contract award.

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<sup>1</sup> See Appendix A

**Recommendation # 1**  
**ESTABLISH CONTRACTING STANDARDS BOARD**  
(continued)

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The absence of a centralized location for all procurement information makes it difficult for the private sector to do business with the State and leads to a public perception that the State does not have an open contracting process that is equally accessible to all participants.

***Cause of Problem:*** The cause of the problem has two parts.

First: The problem is caused by the lack of a centralized state contracting statute that sets minimum standards. Over the years there have been frequent and well intended additions, revisions, deletions, and exemptions of the various state contract statutes that makes it difficult to account for consistency in the statutory requirements. Consequently it has become difficult to undertake a global fix. Recently this situation has produced a patchwork of reforms to specific statutes without “fixing” the universal problem of the absence of centralized state contracting statutes.

Second: The first part of the problem is exacerbated by that lack of a centralized oversight authority in the State that has the mandate to assure that all state contracting statutes are administered by each agency in a manner that achieves the goals of consistency, compliance, integrity, transparency and efficiency.

***Recommendations  
For Improvements:***

The State should establish a new state “*Contracting Standards Board*” (CSB) with oversight authority for all types of contracts entered into by the various state agencies, offices, institutions, committees, and municipalities that receive state grants that exceed \$500,000. The roles and responsibilities of the Board must be clearly defined. The Board’s extent of authority must be precisely delineated to avoid decisions being made that are the statutory authority of the respective agency. Another important item that should be included in any new formation of an oversight board is a clear and distinct required skill set for members. The selection of board members should focus on their expertise in contracting as opposed to a general technical requirement. This is consistent with the federal contracting officer designation, which is deemed as a professional skill set.

**Recommendation # 1**  
**ESTABLISH CONTRACTING STANDARDS BOARD**  
(continued)

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The CSB shall have the following responsibilities:

- Perform a comprehensive review of all existing state contracting and procurement statutes;
- Create a new, unified "*State Procurement & Contracting Statute*" that sets minimum contracting standards for all types of selections, procurements, and resulting contracts that is applicable to all state entities and municipalities. Each contracting agency should be required to develop the administrative documents necessary to implement the statutes;
- Create administrative rules and minimum standards that can be easily modified when a new problem arises, based upon the new procurement and contracting statute, for all types of selections and resulting contracts, modeled after the Federal Acquisition Regulations (FAR);
- Produce a user friendly, how to manual, called the "*State Procurement & Contracting Manual*" that outlines the rules, regulations, and standards for all types of selections and resulting contracts. Each state agency should develop a State Procurement and Contracting Manual following a standard outline as developed by the CSB. The CSB should develop a standardized format, relying on existing formats that work well. Each agency should develop manuals that follow the established format and meet the requirements of the agency and its various funding sources;
- Perform periodic audits on state entities and municipalities for conformance with CSB contracting rules, regulations and standards;
- Provide technical assistance to state entities and municipalities for implementing CSB contracting rules, regulations, and standards;
- Create a mechanism for the public to provide input to the Board on the process;
- Create a centralized searchable website for posting a summary of all contracting information for all state and municipal solicitations with links to the appropriate source. The site should include the "*State Procurement & Contracting Manual*", all approved contracting processes, and the results of all solicitations (i.e. posting of contract award);

The new CSB should not have centralized contract approval authority. The approval authority of contracts should remain within the individual state agencies, offices, institutions, committees, and municipalities that have statutory authority for selections, procurements, and resulting contracts. The CSB should be empowered to restrict an agency's contracting limits if the CSB finds that a lack of adherence to approved procedures existed



**Recommendation # 1**  
**ESTABLISH CONTRACTING STANDARDS BOARD**  
(continued)

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until such time as the agency implements an approved corrective action plan. Other sanctions could be explored along these lines. Another possible scenario could include the restructuring of the State Property Review Board (SPRB) to include these functions.

The Work Group discussed the possibility of establishing a permanent oversight and review board for all major state contracts. This discussion included a Board that would "scrutinize and check all contracts". The Work Group does not recommend this level of review, since it would create unnecessary and excessive delays. Expediency is one of the Task Force's objectives and one that the Work Group agrees is essential to ensuring the integrity of the bid process.

During the past few years there have been bidding irregularities within the state bidding process. The projects that have been subject to possible steering and inappropriate influence have been outside the State's standard lowest responsible bid process. These are known as "fast track" projects, which are exempt from C.G.S. Sec. 4b-91. The only way to gain a 4b-91 exemption is through legislative action. Public Acts 03-215 and 04-141 made it more difficult to gain such an exemption, and established a panel procedure for selecting any fast track bidder. However, there is no effective way to prohibit the legislature from approving future fast track projects. Adding another layer of review of the bid process risks increasing the number of projects given fast track status.

Inevitably the reason cited to the legislature for an exemption is that the bid process is too lengthy and burdensome. The addition of a new level of review to the bid process will only add to the time it takes. Lengthening the time period will add very little in terms of minimizing fraud or abuse, and will only increase the pressure on agencies to seek a legislative exemption. To the extent that integrity and transparency is built into the process while improving expediency, we will be more successful than lengthening the bid process by adding an additional layer of review.

Instead, we recommend establishment of a Contracting Standards Board. That board would be the centralized authority to develop and promulgate minimum standards for all state contracting. The contract bidding standards would set the minimum requirement for all state agencies to ensure that state contracting for all goods and services meet the objectives of consistency, compliance and quality control, transparency and expediency.

**Recommendation # 1**  
**ESTABLISH CONTRACTING STANDARDS BOARD**  
(continued)

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***Statutory Changes***

***Required:***

As a precursor to the establishment of a new state "*Contract Standards Board*" (CSB), the Legislature should conduct a comprehensive review of all existing state procurement and contract statutes with the goal of producing a new, unified "*State Procurement & Contracting Statute*". This new statute should be applicable to all types of selections, procurements, and resulting contracts for all state entities and municipalities.

## **Recommendation # 2**

### **IMPLEMENT TRAINING PROGRAM**

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<b><i>Current Situation:</i></b>	Currently, there is a lack of formal internal training for employees involved in the contracting and consultant selection process. External training in the process is also not provided by the contracting agency to prospective bidders or contractors.
<b><i>Problem:</i></b>	Each employee involved in the contracting and consultant selection process may not be adequately trained to competently carry out the tasks they are required to perform. Prospective bidders or contractors may not be participating based upon a lack of understanding of the process. This lack of external training adds to a lack of transparency and reduces the participants that can monitor the process.
<b><i>Cause of Problem:</i></b>	A formal internal training program or external program has not been instituted in the agencies. Currently, employees involved in the contracting process learn on the job, through their own review of statutes, regulations, policy documents and by direction received through experienced employees.
<b><i>Recommendations for improvement:</i></b>	<ul style="list-style-type: none"><li>• Each agency should develop and establish a formal internal training program to ensure that employees perform their functions properly. A well-trained staff will consistently apply the agency-mandated procedures and processes and will perform their jobs correctly, with less oversight, in a shorter period, without “spinning wheels.”</li><li>• Training of employees should include initial training, ethics education, continuing education, and contract processing manuals that are faithfully updated.</li><li>• Provide all employees who deal with consultants or contractors with training to make proper evaluations on the required forms.</li><li>• Each contracting agency should develop a consistent external training program offered to private sector contractors, consultants and vendors with the aim of providing a consistent understanding of the rules, regulations, and standards on the State’s contracting procedures and the process. External training would educate and provide information on how the system works, with the goal of expanding the pool of prospective bidders to increase competition and reduce the cost to the state.</li><li>• Conduct yearly trade shows or seminars as a mechanism to provide interested parties with an opportunity to become knowledgeable of the process.</li><li>• Establish funding for an external training and seminar program in conjunction with the state university system to provide training and education in contracting procedures for state procurement activities.</li></ul>

- Include the details of these training programs in a Statewide Process Manual to achieve the goal of consistency among the agencies.
- Include helpful information on a centralized procurement solicitation web-site. Currently information is available upon request or through some of the agency's web-sites.

***Statutory changes  
required:***

Not applicable.

**Recommendation # 3**  
**REQUIRE INTERNAL PERFORMANCE REVIEWS**

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<b><i>Current Situation:</i></b>	A formal internal performance review process to assess whether existing policies, procedures, and mandates are efficient and being followed properly by staff is not consistently done within the contracting agencies.
<b><i>Problem:</i></b>	Current practices, policies, or procedures that should be modified or corrected may continue since problems or inefficiencies may not be identified.
<b><i>Cause of Problem:</i></b>	A formal internal performance review process has not been consistently established in the contracting agencies.
<b><i>Recommendations for improvement:</i></b>	<p>Develop and establish an internal performance review process within each agency to ensure optimal performance and quality control.</p> <p>Conduct a periodic review that would provide an assessment as to whether the procedures, mandates, and policies established for staff, who will be charged with various aspects of the contract process are followed.</p> <p>Use the internal performance review as a useful management tool for self-correction and goal setting purposes. A review can be helpful in identifying the need for additional training or procedure modification. This review and performance assessment could be conducted randomly within each section of an agency on a periodic basis.</p> <p>Include the details of the internal performance review in a Statewide Process Manual to achieve the goal of consistency among the agencies.</p>
<b><i>Statutory changes required:</i></b>	<b>Not applicable.</b>